



**The Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

Matter of: Restrepo Enterprises, Inc.

File: B-228233.2

Date: December 8, 1988

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## DIGEST

1. Protest allegations that: (1) initial solicitation omitted required terms, (2) restrictive provisions were added to solicitation, (3) proposal acceptance periods had expired and (4) procurement was repeatedly delayed by requests for best and final offers and proposal acceptance period extensions, are dismissed as untimely when protester competes under solicitation without objection and files protest after award.

2. Protest that agency improperly evaluated proposals is denied where agency explains that it proposes to make award to firm that submitted the technically acceptable proposal with the lowest evaluated cost and protester does not respond to agency's position on the issue and it appears from the record that agency evaluated proposals properly.

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## DECISION

Restrepo Enterprises, Inc., protests the award of a contract to Eagle Technology, Inc. under request for proposals (RFP) No. DABT60-87-R-0087, issued by the Army for the design and development of interactive courseware to be used at the Army's Air Defense Artillery School. We deny the protest in part and dismiss it in part.

The RFP was for the development of courseware including lesson plans, exercises and tests in specific subject areas for entry-level service personnel.

The RFP called for offers on a cost-plus-fixed-fee basis and provided for award to the offeror submitting an acceptable technical proposal at the lowest evaluated cost. The

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technical evaluation factors, listed in descending order of importance, were as follows:

1. Sample lesson materials
2. Technical/management proposal
3. Experience and technical qualifications of personnel
4. Ability to complete the contract on time.

In response to the solicitation, 12 offerors submitted timely initial proposals on or before August 14, 1987. Of those proposals, five, including Restrepo's, were judged technically acceptable. One of the offerors whose proposal was judged technically unacceptable filed a protest with our Office on September 22. As a result, the agency delayed further action on the procurement until the protest was denied. See Kinton, Inc., B-228233 et al., Jan. 28, 1988, 88-1 CPD ¶ 86.

By letters dated March 9, 1988, all five technically acceptable offerors were notified that the agency would conduct discussions. Each offeror was provided agency comments on its proposal, was given 15 days to respond to those comments and was asked to extend its proposal acceptance period until May 7. All five offerors agreed to the extension. On April 25, as a result of delay caused by illness of the agency's contract specialist, all five offerors were again asked and agreed to extend their proposal acceptance periods until June 4.

After the submission of best and final offers (BAFOs), the proposals were evaluated for cost realism. Since the cost evaluation revealed that some offerors had not addressed the cost of materials in their BAFOs, the agency requested a second round of BAFOs; these were submitted in May.

On May 20, the agency performed a cost analysis of the second BAFOs. At that time, Restrepo was determined to have the lowest evaluated cost. Restrepo was contacted during this period and requested to furnish some information that was missing from its proposal. In early June, however, the contracting activity discovered that the solicitation did not include a licensing agreement and nondisclosure provisions needed for certain privately owned software to be provided by the government to the awardee. On June 10, the solicitation was amended to include this material and a third BAFO was requested.

In the third BAFOs, while Restrepo made no changes in its cost proposal, Eagle updated its staffhour rates and, due to the availability of computer hardware of which the firm was

previously unaware, reduced its estimated staffhours. Eagle was then judged to be the acceptable offeror with the lowest evaluated cost, and the Army therefore proposes to award the contract to Eagle. Restrepo filed a protest with this Office on August 11, after receiving the Army's August 3 preaward notice.

Restrepo contends that the Army: (1) omitted required provisions from the initial solicitation; (2) added unduly restrictive licensing and nondisclosure provisions to the solicitation; (3) improperly allowed the June 4 proposal acceptance period to expire before requesting extensions; (4) improperly delayed the procurement process by means of repeated BAFOs and proposal extensions when proper procurement planning could have resulted in the incorporation of any necessary nondisclosure provisions in the original solicitation; and (5) failed to evaluate proposals in accordance with the solicitation evaluation criteria.

As a preliminary matter, the Army maintains the first four issues are untimely. Under our Bid Protest Regulations, protests that are based on alleged improprieties which are apparent on the face of the solicitation or which are later incorporated into the solicitation, must be protested prior to the closing date for receipt of initial proposals or prior to the next closing date following their incorporation. 4 C.F.R. § 21.2(a)(1) (1988).

Here, the initial closing date was August 14, 1987, and Restrepo did not protest the alleged omissions in the initial solicitation until almost 12 months after that date. Also, the licensing and nondisclosure provisions which Restrepo protests were incorporated into the solicitation on June 10, yet not protested until long after the next closing date, which occurred on July 1. Further, other events of which Restrepo complains--the alleged expiration of the proposal acceptance period and the repeated requests for BAFOs and proposal acceptance period extensions--were not protested before the closing dates following those events. In fact, Restrepo submitted BAFOs and extended its proposal acceptance periods throughout the competition without protesting. Thus, these issues are all untimely and will not be considered. Hollingsead International, B-227853, Oct. 19, 1987, 87-2 CPD ¶ 372.

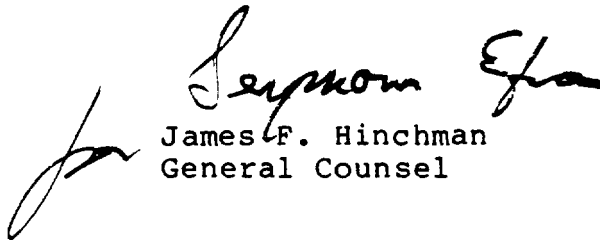
Restrepo's remaining allegation is that it "has reason to believe" that the Army did not evaluate proposals utilizing the evaluation criteria set out in the solicitation. In response to this contention, the Army explains that it proposes to award a contract to Eagle because that firm

submitted the technically acceptable final proposal with the lowest evaluated cost.

The solicitation provided for award to the lowest cost, technically acceptable offeror. Here, although Restrepo's proposal was judged technically acceptable and lower in cost after the second round of BAFOs, Eagle's proposal was also considered technically acceptable and was found to offer the lowest evaluated cost after the final BAFOs were received. Restrepo, other than raising concern about the evaluation, does not identify in any way how the evaluation might have been inconsistent with the criteria.

We find nothing improper in the Army's evaluation and, in the absence of some explanation from Restrepo as to how it believes the evaluation was flawed, we have no basis upon which to object to the agency's selection of Eagle. We deny the protest on this issue.

The protest is denied in part and dismissed in part.

A handwritten signature in black ink, appearing to read "James F. Hinchman", is written over the typed name and title. To the left of the signature is a large, stylized initial "JH".

James F. Hinchman  
General Counsel